Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of the United States Telephone Association for Reform of the Interstate Access Rules	)	RM-8356

COMMENTS OF
AMERICAN TELEPHONE AND TELEGRAPH COMPANY

Pursuant to the Commission's public notice of October 1, 1993, American Telephone and Telegraph Company ("AT&T") hereby comments on the September 17, 1993 petition of the United States Telephone Association ("USTA") for a "comprehensive" rulemaking to "reform the existing interstate access charge rules." Petition at 1.

INTRODUCTION

USTA has proposed what it calls a "framework" for reform of the Commission's access regulations, one that USTA contends is "responsive to today's access marketplace." Petition at 2; see also id. at 6. As AT&T has recently stated, AT&T agrees with USTA and others on the need for broad-ranging reform of the Commission's access rules to bring those rules into alignment with current marketplace and technological realities.[1]

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[1] See, e.g., Letter from Roger Riggert, Regulatory Director - AT&T, to William F. Caton, Secretary - FCC, in DA 93-847, dated September 23, 1993, at 1-3 ("Riggert Letter") (addressing report of NARUC Access Issues Work Group).

Moreover, AT&T agrees in principle with several of the specific reforms suggested by USTA. See infra p. 3. Taken as a whole, however, USTA's proposal does not provide an appropriate framework for such a review, for two reasons.

First, and most fundamentally, USTA's package of proposed reforms is based on a false assumption about the nature of "today's access marketplace": namely, that widespread local exchange competition either exists already or will shortly develop, without further action by the Commission or state regulatory bodies. As AT&T and others have shown, the LECs still maintain a bottleneck monopoly over exchange access services, and there is no immediate prospect of effective competition in that market. Therefore, the Commission should focus its access reform efforts on (1) creating the conditions necessary for competition, and (2) protecting consumers and minimizing competitive distortions in the meantime. USTA provides no guidance whatever on the steps the Commission should take to increase the opportunity for access competition, but instead seeks to abolish key consumer safeguards before competition ever has a chance to develop.

Second, USTA ignores the fact that the Commission already has proceedings underway to address several of the issues USTA raises here. There is no need to duplicate these proceedings or to assume that the

Commission is incapable of coordinating its analysis and resolution of these issues unless they are joined in a single, omnibus proceeding. For these reasons, USTA's petition should be denied.

I. USTA's PROPOSED FRAMEWORK IS PREMISED ON EXTENSIVE LOCAL COMPETITION, WHICH PLAINLY DOES NOT EXIST.

Some of USTA's specific proposals are unobjectionable -- even laudable -- in principle. For example, AT&T agrees with USTA that all market participants should contribute to the various explicit subsidies that now pervade the telecommunications industry, including the Universal Service Fund (USF), Linkup, Lifeline, and Long-Term Support programs. See Petition at 6, 40-41. Similarly, AT&T agrees that non-usage sensitive common line costs (such as those recovered in the carrier common line ("CCL") charge) should be recovered on a flat-rate basis rather than through usage-sensitive charges. See id. at 41. AT&T, however, strenuously disagrees with several of USTA's specific proposals for effecting these changes.[2]

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[2] For example, USTA's proposal for a new "intracompany universal support mechanism" to replace geographic averaging appears to be essentially the same as the "bulk billing" proposal made by Ameritech in its restructuring proposal, and is blatantly anticompetitive for the same reasons. See Comments of AT&T in Petition for a Declaratory Ruling and Related Waivers to Establish a New Regulatory Model for the Ameritech Region, DA 93-481 (June 11, 1993) ("AT&T Ameritech Comments") at 29-32.

The heart of USTA's proposal, however, is an elaborate scheme for relaxing or, in many cases, eliminating entirely the Commission's current system for regulating the prices LECs may charge for access. See Petition at 20-37. This proposal, in turn, is premised on USTA's assertion that, for the most part, "the access market is up for grabs." Id. at 9.

This premise is demonstrably false. As AT&T has explained at length in its comments on Ameritech's restructuring proposal, the local exchange has been found by the courts to be a natural monopoly, and thus may not be capable of sustained competition.[3] And, regardless whether the local exchange is a natural monopoly, it is a monopoly today.[4]

USTA's principal argument in this regard is to suggest that there has been widespread penetration by competition access providers (CAPs), in part because of "fiber technology" and the Commission's actions in the "expanded interconnection" proceedings. Petition at 8-9. However, as AT&T explained in its comments in the

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[3] AT&T Ameritech Comments at 7-11.

[4] See AT&T Ameritech Comments at 7-22; Reply Comments of AT&T in DA 93-481 (July 12, 1993) ("AT&T Ameritech Reply") at 4-8. In the context of the Ameritech and other proceedings, AT&T has urged the Commission to put in place mechanisms designed to determine whether and to what extent exchange competition is technologically and economically possible in the future.

Ameritech proceeding, these developments have so far allowed the CAPs to capture less than one percent of the access market nationwide, and there is no indication their share will substantially increase anytime soon.[5] Moreover, CAPs serve only large business customers in large urban areas, and there is every indication this condition will likewise persist for the foreseeable future.[6]

Further, USTA's suggestion that radio-based services "will also compete" with LECs' access services at some point in the future (Petition at 8) is itself a powerful concession that such competition has not yet developed. Here, too, as AT&T has previously explained, there is no indication that radio-based services will provide meaningful exchange access competition anytime soon; indeed, the prices of such services would have to decline dramatically for customers to view them as meaningful substitutes for traditional land-line services.[7]

USTA seeks to escape these fundamental facts by suggesting a deficient standard of competition.

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[5] AT&T Ameritech Comments at 11-14; AT&T Ameritech Reply Comments at 4-5.

[6] See AT&T Ameritech Comments at 12; AT&T Ameritech Reply at 5.

[7] See AT&T Ameritech Comments at 15-16; AT&T Ameritech Reply at 6-7.

Specifically, USTA contends that the market for access services provided by a LEC's wire center should be deemed "competitive" if, in the LEC's own judgment, customers with only 25 percent of the demand for access services within the wire center's service area "have available to them an alternative source of supply" and "actively seek to reduce the cost of their access services." Petition at 26 (emphasis added). USTA's test is plainly inadequate, both as a means of determining whether a particular access market is competitive, and for assessing the state of access competition generally.[8] In any event, USTA has not demonstrated the existence of significant access competition, even under this patently inadequate standard.

If access competition eventually develops to any significant extent, it may then be appropriate for the Commission to consider whether its system for regulating LECs' access rates adequately accommodates that competition. However, the key elements of the price cap system -- including filing requirements, sharing, and the caps themselves -- should not be relaxed until (i) a LEC has demonstrated genuine competition (under a realistic

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[8] A more realistic standard for determining "effective competition" in local telephone services, including access services, was recently proposed by AT&T to members of the Senate Commerce, Science and Transportation Committee. See Letter from Robert E. Allen to Senators Daniel K. Inouye and John C. Danforth dated October 5, 1993.

standard) in a properly defined market, and (ii) the Commission (not merely the LEC itself) has made a finding to that effect. There is certainly no basis for such a finding now or in the near future.

Accordingly, instead of commencing a major proceeding to revise the existing regulatory scheme for LECs' access services on the assumption that competition has already arrived, the Commission should focus its efforts on creating the conditions that might permit such competition to develop. AT&T has previously suggested a number of issues that should be addressed in this connection, such as unbundling of basic network functions; establishing a uniform costing standard such as TSLRIC to measure the reasonableness of LEC access charges; requiring recovery of non-usage sensitive loop costs through flat-rate charges; initiating a more targeted support program to assure universal access to customers in high-costs areas; and ensuring local number portability.[9] AT&T urges the Commission pursue these matters as a first order alternative to USTA's proposed reforms of the Commission's price cap regulations and related rules.

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[9] See, e.g., Riggert Letter at App. B, pp. 1-3 & n.1. In addition, access competition will require significant changes at the state level, such as the elimination of franchise restrictions and restrictions on resale. See id. at p. 6.

II. USTA'S PROPOSED "FRAMEWORK" LARGELY DUPLICATES EXISTING COMMISSION PROCEEDINGS.

USTA's proposal for a rulemaking is flawed for another reason as well: it unnecessarily seeks to have the Commission address, in a new, "comprehensive" proceeding, issues that the Commission already is addressing (or soon will address) in existing or soon-to-be-initiated dockets.

The Commission, for example, will shortly begin its previously scheduled review of the entire LEC price cap system.[10] USTA and the LECs will have an opportunity to advance their arguments with respect to sharing (see Petition at 34-38) and other price cap-related issues during that review. There is no need for the Commission to address such issues in a separate, parallel proceeding.

Similarly, the Commission has either already commenced, or is about to commence, inquiries into most of the subsidy-related issues discussed by USTA. For example, the Commission has indicated that it will shortly commence a comprehensive inquiry into the "whole panoply" of USF issues.[11] Although AT&T would welcome the

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[10] See Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order, 5 FCC Rcd. 6786, 6834-35 (1990), on recon., 6 FCC Rcd. 2637 (1991).

[11] Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, CC Docket No. 80-286, Notice of Proposed Rulemaking, FCC 93-435, released September 14, 1993 [¶¶ 2, 15].

inclusion of all other explicit subsidies in this proceeding, there is no reason for the Commission to establish an additional proceeding in which to address USF-related issues.

Moreover, the Commission already has a proceeding underway in which it is examining the "public policy support flows" inherent in the local transport Residual Interconnection Charge.[12] Cf. Petition at 39. Here again, there is no reason for the Commission to address this issue again in a separate proceeding.[13]

USTA seeks to defend this duplication of effort on the ground that a single, "comprehensive rulemaking" is necessary to ensure a "coordinated effort." Petition at 6. This is fallacious. The Commission is certainly capable of coordinating its access reform efforts across several parallel proceedings. To be sure, it may sometimes be more efficient to combine several related access issues for consideration. But that is no reason to

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[12] See Transport Rate Structure and Pricing, Report and Order and Further Notice of Proposed Rulemaking, 7 FCC Rcd. 7006, 7063 (1992) [¶ 133] ("we tentatively conclude that we should require a phased removal from the interconnection charge of all costs except those relating to clearly identified public policy goals").

[13] In addition, the Commission has very recently addressed the "capital recovery" issue discussed on page 45 of USTA's petition. See Simplification of the Depreciation Prescription Process, CC Docket No. 92-296, Final Order, FCC 93-452, released October 20, 1993. There is no need for the Commission to reopen this issue now.

revisit anew issues that the Commission already has under consideration in other proceedings.

CONCLUSION

For the reasons stated above, USTA's petition should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Ann Marie Abrahamson, do hereby certify that on this 1st day of November, 1993, a copy of the foregoing "Comments of American Telephone and Telegraph Company" was mailed by U.S. first class mail, postage prepaid, to the parties listed below.

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